

89-1753

Supreme Court, U.S.
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JOSEPH F. SPANIOLO,
CLERK

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1989

DARRYL C. GARDNER,
PETITIONER-APPELLANT,

VS.

COMMISSIONER OF INTERNAL REVENUE,
RESPONDENT-APPELLEE

PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DARRYL C. GARDNER
Petitioner
Route 3, Box 273
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(615) 272-3316

Attorney for Respondent:
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Chief, Appellate Section
Tax Div., Dept. of Justice
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QUESTIONS PRESENTED

1. Whether owning "property" is a right
(or a privilege)?
2. Whether a person has such right
(or privilege) to own property?
3. Whether a person has a right
(or privilege) to acquire, use,
enjoy, and dispose of such property?
4. Whether political power is a person's
property?
5. Whether Petitioner has such power?
6. Whether Petitioner has a right
(or privilege) to dispose of such power?
7. Whether Petitioner incurred a tax debt
through such right (or privilege)?
8. Whether Petitioner has a right
(or privilege) to dispose of the specific
property whereby he allegedly incurred
obligations in this particular situation?
9. Whether Petitioner properly and duly
disposed of such property?

10. Whether, as the result of such disposal, Respondent is prohibited from exercising the power and authority of his Office in this matter?

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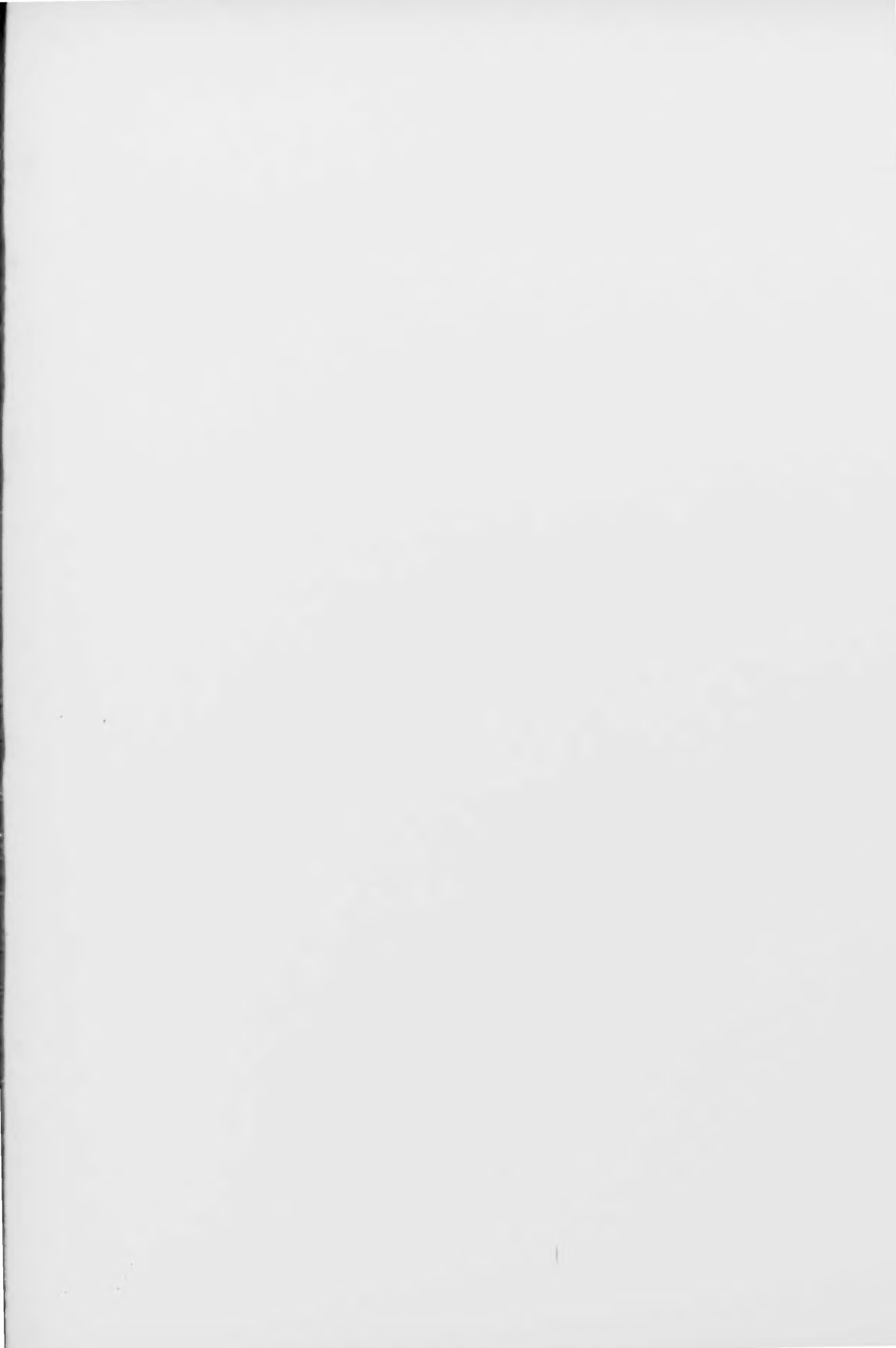
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PETITION FOR WRIT OF CERTIORARI TO
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FOR THE SIXTH CIRCUIT

The Petitioner, Darryl C. Gardner, Pro Se,
respectfully petitions for a Writ of
Certiorari to review the judgment and opinion
of the United States Court of Appeals for the
Sixth Circuit entered in this case.

OPINIONS BELOW

The opinion of the Court of Appeals (App.
A, infra, (A-19 to A-22) was entered by order
dated February 7, 1990.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Pursuant to Rule 12 of Rules of the Supreme Court of the United States comes Petitioner, Darryl C. Gardner, and seeks review from an ORDER in which the Court of Appeals for the Sixth Circuit which generally affirmed prior orders entered in United States Tax Court, as follows:

<u>U.S.T.C.</u> <u>No.</u>	<u>Date</u> <u>Entered</u>	<u>6th Cir.</u> <u>No.</u>	<u>Date</u> <u>Entered</u>
3334-88	Apr 17, 1989	89-1855	Feb 7, 1990
17904-88	Feb 21, 1989	89-1555	Feb 7, 1990

GOVERNMENT, AND CONSTITUTIONS

Petitioner filed two Briefs herein, on June 16, 1989 (89-1555) and August 25, 1989 (89-1855). Therein it was shown the supreme authority rests in the people [Williams v. Carr, 218 Tenn. 564, 404 S.W.2d 522 (1966); Cummings v. Beeler, 189 Tenn. 151, 223 S.W.2d 913 (1949); Tenn. Const. Art. I, Sec. 1];

government, in form and substance, emanates from the people, granting powers to be used directly on them, and for their benefit [M'Culloch v. Maryland., 17 U.S. 316 (1819)] and protection [Dibrell v Morris' Heirs, 89 Tenn. 497, 15 S.W. 87 (1891)].

Constitutions are made as a result of the consequences of personal and political freedom [Dibrell, supra]; contracts [Martin v. Hunter's Lessee, 14 U.S. 304 (1816); Black's Law Dictionary, 5th Edn. @ 291]; compacts [Journal of Constitutional Congress, 1774-1789, @ 74; Black's, supra @ 254] made by the people of the United States to govern themselves [Chis olm v. Georgia, 2 U.S. 419 (1792)]. Further, as a condition of their consent to be governed, the people placed strict limits on their representatives in all branches of government so created. [Phillips v. Lewis, 3 Shannon's Cases 230 (1877); Dibrell, supra].

REPRESENTATIVE

Black's, supra @ 1170, shows the term "representative" has several meanings, each depending upon a person permitting another to act in his behalf, i.e. "represent" him. Such follows contract laws, the interference of which is forbidden by the U.S. Constitution, Art. I, Sec. 10, Cl. 1, which states in pertinent part:

No state shall ... pass any ... Law impairing the Obligation of Contracts.

Such principle was upheld in Dartmouth College v. Woodward, 17 U.S. 518 (1819).

Representative is interchangeable with "agent" [Black's, supra @ 59, 1170], and having either requires knowledgable, willing consent of the principal [Black's, supra @ 1073].

It is immaterial which branch of government a person "represents", or whether his title includes the term "representative." And it is not limited to persons chosen by the people to represent their several interests in

a legislative body; it has a much broader meaning. He can also be one who merely acts in a capacity which functionally makes him represent government, such as members of the executive branch, an attorney prosecuting or defending a case who represents the government as a client or employer, a judge representing the judicial branch, an agent or auditor for the Internal Revenue Service determining the amount of taxes a "taxpayer" allegedly owes, or a person performing an administrative function. Thus, irrespective of which branch of government through which such person functions, he is in fact a "representative."

Through the principles of agency law, there is virtually no limit to the number of representatives a person can have, if he so chooses. And it is not limited to the living; even deceased persons can have representatives who carry out the intent of wills, etc.

Thus it can reasonably be said that:

- (1) government is simply the people exercising their political (sovereign) power, and
- (2) all persons performing any function of government "represent" the people in their official capacity, irrespective of which branch they function through.

PROPERTY

As was set forth in said Briefs, "Property" is an issue stemming from state law [Henderson v. Bentley, 500 F. Supp. 62 (1980); Webb's Fabulous Pharmacies, Inc. v. Beckwith, 449 U.S. 155 (1980)]; whose legal definitions include tangibles, intangibles, visible, invisible, real, personal [Black's, supra @ 1095], contracts [Harbison v. Knoxville Iron Co., 103 Tenn. 421, 53 S.W. 955 (1899)], money [Railroad v. Harris, 99 Tenn. 684, 43 S.W. 115 (1897)], and others.

It is not necessarily a physical thing, rather it is more correctly described as a

collection of rights and interests. It expressly or by fair and necessary implication includes every species of valuable right and interest [Black's, supra @ 1095], anything having exchangeable value [Harbison, supra], unrestricted and exclusive [Vanderlip v. Grand Rapids, 73 Mich. 522, 41 N.W. 677 (1889)] right to the use of a thing, the right to acquire, use, enjoy, and dispose of property, [Am Jur 2d "Property," Sec. 1; Willcox v. Penn. Mut. Life Ins. Co., 357 Pa. 581, 55 A.2d 521 (1947)], with the right of user being the most essential and beneficial [St. Louis v. Hill, 116 Mo. 527, 22 S.W. 861 (1893)].

Hereinafter, "property" will include any one or more of them.

POLITICAL POWER

Manifestly, this nation's forefathers knew and understood the principles involved in the property right known as political or sovereign power, and they guaranteed certain rights to

themselves and their posterity. They also understood that a higher power existed than any government, namely that of their creator, and observed such when they created the new government, one which derived its power solely from the people's consent to be governed, as shown in the Declaration of Independence, second paragraph, and the Tennessee Constitution, Art. I, Sec. 1.

Through the Declaration of Independence, U.S. Constitution, Tennessee Constitution, and laws in pursuance thereof, our forefathers guaranteed to themselves and to all their posterity property in the form of political power. It is axiomatic that Petitioner is specifically included in such posterity.

Constitutional rights are among the highest of all political rights, probably the highest of all. Such rights include, but are not limited to the Fifth (5th) Amendment of the U.S. Constitution. Among other things, the Fifth Amendment provides for waiving such

rights through response and preservation through silence.

A PRIORI

From Miranda v. State of Arizona, 384 U.S. 436 (1966), we learn that a person can waive certain property, to wit, his Constitutional right to remain silent when questioned by any person "representing" government.

The basic principle upon which our system of jurisprudence is allegedly founded is that a person is presumed innocent until proven guilty; nevertheless, in matters not yet proven, the courts have traditionally been loath to accept any new or opposing argument. Typical of their unwillingness was that shown toward utilizing the Fifth Amendment of the U.S. Constitution in one's defense prior to June 13, 1966 when this Court made its landmark decision in Miranda, supra.

Despite such Amendment being part of the organic law of this nation for approximately one and three-quarter centuries, the courts had displayed unanimous, virtually merciless hostility toward considering the arguments therein as anything other than absolute nonsense. However, after Miranda, supra, such defense became fashionable, and courts at all levels became willing, indeed eager, to accept such premise; nevertheless, some courts have yet to observe such as the law of the land.

If the quantity of decisions relying upon an earlier decision, "a priori", is any measure of the value of a legal principle, then Miranda, supra, must - by any standard - be among the most valuable ever made, despite its relative youth of a mere twenty-three (23) years, according to the quantity of decisions relying upon it in Shepard's Citations.

TAX

Referring to Black's, supra @ 1307, it is unquestionable that taxes - regardless of the name, form, or method of enforcement - are in essence a "maintenance fee" for a person's interest in government, whether such interest actually exists or is merely presumed in the absence of evidence to the contrary. Such interest necessarily includes representation, either actual or by fair, necessary, and reasonable inference, and it operates only in the absence of evidence to the contrary.

When that interest ceases, all the person's obligations - whether real or merely alleged - to government cease. In accordance with the Tennessee Constitution, Art. I, Sec. 21, which prohibits the taking of a person's property without the consent of his representative, and without due process pursuant to Art. I, Sec. 8 therein, the person owes nothing to government thereafter for he receives nothing therefrom.

POLITICAL RIGHTS ARE
BOUND THROUGH THE LAND

All political rights are duly bound through the land, i.e. they are territorial. Through the "Supremacy Clause", U.S. Constitution, Art. VI, Cl. 2, the jurisdictional power of each officeholder - irrespective of his title or function - is territorial. Coextensive with and annexed to all of the land that comprises the Office of Trust of all public officers is the U.S. Constitution. It is not inconsequential that such identifies itself therein in said Supremacy Clause. Further, all public offices are positions of trust [Taylor and Marshall v. Beckham, 178 U.S. 548 (1900)] and are bound to the U.S. Constitution through Art. VI, Cl. 3.

Each Law made pursuant to any Constitution is identified by the respective territory (real property) to which it pertains, e.g. United States Codes (U.S.C.), Tennessee Code Annotated (T.C.A.), et al.

Political power is expressed in terms of the land; all documents related thereto must be filed in the designated repository. Pursuant to T.C.A., Secs. 66-24-101, et al, the respective county courthouse is the proper and sole repository for storing and safekeeping public records relating to real property in Tennessee. This necessarily includes but is not limited to deeds, wills, releases, liens, public officials' oaths, and other documents directly or indirectly related to real property.

Since each public office is a trust, and the territorial jurisdiction thereof is expressed in terms of real property, it is appropriate to identify the land as "trust property" when describing the same relative to government.

Said County of Hawkins (T.C.A. Secs. 5-1-101, et seq.) wherein Petitioner resides is an element of the State/District of Tennessee (26 U.S.C. 7621, et seq.), made up

of a certain designated amount of land created by legislative act (originally by the General Assembly of North Carolina, dividing the County of Sullivan to erect a new and distinct County by the name of Hawkins, in Chap. 34, Sec. 1, Acts of 1786), and following numerous alterations via legislative boundary changes, this very same amount of land is a part of the trust property of which the public office of Respondent is composed. Further, said County of Hawkins is a body corporate with the capacity to acquire by gift or otherwise real and personal property (T.C.A., Secs. 5-7-101 and 5-7-102).

Like any other natural individual, Petitioner has an interest in such trust property; such interest necessarily includes the right to dispose of his political power therein by way of an inherent reserve Power of Revocation. This Power of Revocation, although dormant in most individuals, is retained by the People and secured by the

Ninth (9th) Amendment of the U.S. Constitution and is further reserved to the People by the Tenth (10th) Amendment thereof.

But Petitioner, who is aware and conscious of this Interest in the Trust Property by way of such Power of Revocation, seized of the right of possession and the right of property, has by his DEED granted and conveyed by gift and delivered to said County all of his interest in the Trust Property by way of said reserve Power of Revocation, thus revoking all political power to any Office of Trust which is composed of said County, whether Executive, Legislative or Judicial, State or Federal.

Once the Interest in the Trust Property has been conveyed to said County, it then becomes an active and an express intention of the Petitioner with the effect of being "the supreme Law of the Land" and supersedes the Constitution and laws of this State, thus revoking all political power to any Office of Trust, and Respondent shall be bound thereby.

Beyond all question, no public officer can exercise the power of his office in the absence of jurisdiction. While the two cases cited next refer to the judicial branch, that same principle applies universally to all public offices.

The test of jurisdiction is whether the court has power to enter upon an inquiry, not whether it may ultimately grant the particular relief sought. McCabe v. Ivory, 338 PA 572 (1940).

A court's jurisdiction at the beginning of a trial may be lost in the course of the proceedings due to its failure to afford the defendant due process of law. State ex rel. Anglin v. Mitchell, 575 SW2d 284 (Tenn. 1979).

For Respondent to exercise the powers of his office, having Jurisdiction of the case is mandatory and of the highest priority; it must be the first element. Jurisdiction of the Subject Matter is never waived [Agee v. Dement, 20 Tenn. 332 (1839)]; nor conferred by consent, appearance, plea, or answer, if it does not exist by law [Swift & Co. v. Memphis Cold Storage Whse. Co., 128 Tenn. 82, 158 S.W. 480 (1913)]; and can be raised at any time by

any party or by the court [Gillespie v. State, 619 S.W.2d 128 (1981)]; even in the United States Supreme Court, sua sponte [U.S. v. Mason & Dixon Lines, Inc., 222 F.2d 646 (1955)].

PETITIONER'S RIGHT AND RESPONSIBILITY
TO DISPOSE OF PROPERTY

As shown earlier, it is solely a person's option to exercise his reserved right to dispose of property, in this instance political power, and it is his responsibility to do so when his conscience directs him thusly. Further, no person shall interfere with such right, as shown in the Tennessee Constitution, Art. I, Sec. 3.

Petitioner's conscience directed him to exercise such option, and he complied therewith on December 30, 1988; it was his intent and will to duly grant and convey certain property rights via his DEED, delivered via Certified Mail to Mr. G. Douglas

Price, County Executive, County of Hawkins,
State of Tennessee.

Through said DEED, Petitioner duly exercised the option that is solely his to change his status, dispose of all his interest in government and elect to not participate in government, in fact abolish government as it applied to him, thereby removing himself from "the persons who are in or may come into the like situation and circumstances which constitute the reasons for and the basis of the classification, to wit, within the defined terms of the statute, i.e. the Internal Revenue Tax Law (26 U.S.C. 1, et seq.)". Such DEED and related documents appear as Exhibits E-1, E-2, E-3, and E-5, filed in the Court of Appeals with said Briefs.

Petitioner, an alleged "taxpayer" pursuant to 26 U.S.C. 7701(a)(14), exercised his right to revoke all of his Political Power and interest in any Office of Trust, whether Executive, Legislative or Judicial, State or

Federal. Thus, through a restriction imposed by the U.S. Constitution through the effect of such DEED, Petitioner no longer had any representative; the result was that Respondent [26 U.S.C. 7701(a)(13) and 26 U.S.C. 7802(a)] was left without authority to exercise the power of his Office as it affects Petitioner, i.e. to make a determination and issue said Notices of Deficiency pursuant to 26 U.S.C. 1, et seq., (Internal Revenue Code of 1986, enacted by Public Law 99-514, 100 Stat. 2085).

Respondent is now restricted by the U.S. Constitution through said Supremacy Clause and is forbidden from exercising the power of his Office pursuant to 26 U.S.C. 7802(a) as regards Petitioner.

Because of said restriction, Respondent cannot meet the test of jurisdiction and lacks the authority required to exercise the power of his Office. Any jurisdictional authority Respondent has or may have possessed in this case no longer exists.

COURTS ARE REQUIRED TO BE IMPARTIAL

The procedure used in revenue matters is one in which Respondent's demands are treated essentially opposite to the aforementioned basis alleged of our system of jurisprudence, to wit, "guilty until proven innocent". Such was readily acknowledged by Fred Goldberg, Commissioner of Internal Revenue, in "Nightline", a program broadcast on ABC television, the evening of April 13, 1990, hosted by Ted Koppel. Petitioner would improve on the accuracy of such statement by adding "... regardless of applicable law or its absence, or the facts".

It is patently insufficient and illogical to presume or suggest that a legal principle is invalid because it is new or untried; the only reasonable inference is such is unproven. As Petitioner understands it several similar challenges were made prior to Miranda, supra; only then did the use of principles laid down therein become acceptable.

Even though Petitioner has been unable to locate cites supporting each aspect of the legal principles he is using, it does not invalidate such principles. Considering the fact that it is a virtual certainty that Petitioner is among if not the first to rely upon the legal principles utilized herein, it is not surprising to find that prior decisions in matters supporting his arguments herein have not been located, because in all likelihood they do not exist yet. Please note that like Miranda, supra, this is not because that Plaintiff's arguments are based on invalid principles, instead it is the product of other factors.

Canon 3 of the Model Rules of Professional Conduct and Code of Judicial Conduct shows courts are required to be impartial. But the ORDER which the Court of Appeals entered in this matter on Feb. 9, 1990 illustrates just the opposite. Such was a preposterous, unjustifiable act, displaying a high degree of

prejudice therein, violating the Court's own rules and Code of Ethics.

The Court's use of the phrase "hocus-pocus" therein evinces a hostile, prejudiced attitude; further, according to the limited research Petitioner has been able to accomplish, a similar attitude of the court system in general toward any person who exercises his right of refusing to acquiesce to Respondent's typical method of in effect holding out his hands in the name of the United States Government, demanding the person "fill 'em up" regardless of the law and/or the facts.

For reasons known only to itself, it made a mockery of Petitioner's decision to exercise his right to dispose of his political power. Such was a willing, unprincipled, contumely act attacking this pro se Petitioner's sincere, good faith act to duly dispose of his property, closely paralleling the Court system's general attitude toward any defense

based upon the Fifth Amendment prior to Miranda, supra.

Petitioner would implore said Court and all others similarly inclined to forever recognize the fact that, as a matter of law, each person has an absolute right to defend himself by any lawful means. Due to the dynamic nature of law, even though a party utilizes a novel principle, one which may or may not become a legal precedent, no court has the right to belittle the use of such principle in the manner and to the degree shown herein, whether or not such principle becomes universally accepted.

Petitioner would also remind such Court of the history of this nation-state wherein its forefathers took a stand opposing a tyrannical King of England, knowing their very existence was at stake. By analogy, it would be reasonable to presume such Court would make jest and mockery of such forefathers' notions and actions (labelling them "hocus-pocus", or

substantial equivalent) when they chose to terminate the subjugation they endured at the hands of the King and withdraw themselves therefrom. It is also quite likeky that such Court would have belittled the ideas in Miranda, supra.

Petitioner would demand that in all future acts such Court behave in a responsible manner, respecting its own rules, and refrain from displaying the prejudice it has already willingly shown against this pro se litigant.

REASONS FOR GRANTING WRIT

Hocus-pocus, indeed! In this case, the Court of Appeals totally misinterpreted and/or failed to meaningfully acknowledge whether Petitioner had a right to change his status, disposing of his property right otherwise known as "political (sovereign) rights" - in addition to, or perhaps because of - its failure to render an impartial judgement therein. Petitioner would request this Court to view the underlying attitude shown in the Court of Appeal's ORDER of February 7, 1990 as a prejudiced, hostile tribunal having no intention of providing the impartiality demanded by due process, and to overturn such decision accordingly.

Respondent is operating under the mistaken presumption that representation remains in effect in this instant Case; such presumption is without foundation because Petitioner removed himself from "the persons who are in or may come within the defined terms of the

Internal Revenue Tax Law (26 U.S.C. 1, et seq.)".

Through the restriction shown above, Respondent lacks authority to exercise the power of his Office pursuant to such Tax Law, making the determinations set out in the Notices of Deficiency dated November 24, 1987 and April 11, 1988 concerning the years 1982-1984, and 1985, respectively.

There can be no doubt the answer to each question presented to this Court is an absolute, unqualified "yes". Under the principles of contract law and agency law and referring to the Tennessee Constitution, Art. 1, Sec. 21, Petitioner has no representative. By the above-mentioned conveyance, Petitioner abolished government as it formerly did or may have applied to him.

Petitioner's Petition should be granted, with this Court reversing and overruling all earlier decisions on all points, finding that Petitioner duly disposed of his political

power in the manner shown herein, and severed the connection through which Respondent is authorized to act, prohibiting Respondent from exercising the power of his office as regards Petitioner.

Further, said determinations made pursuant to 26 U.S.C. 1, et seq., in this matter to be rescinded, abated in their entirety for all time.

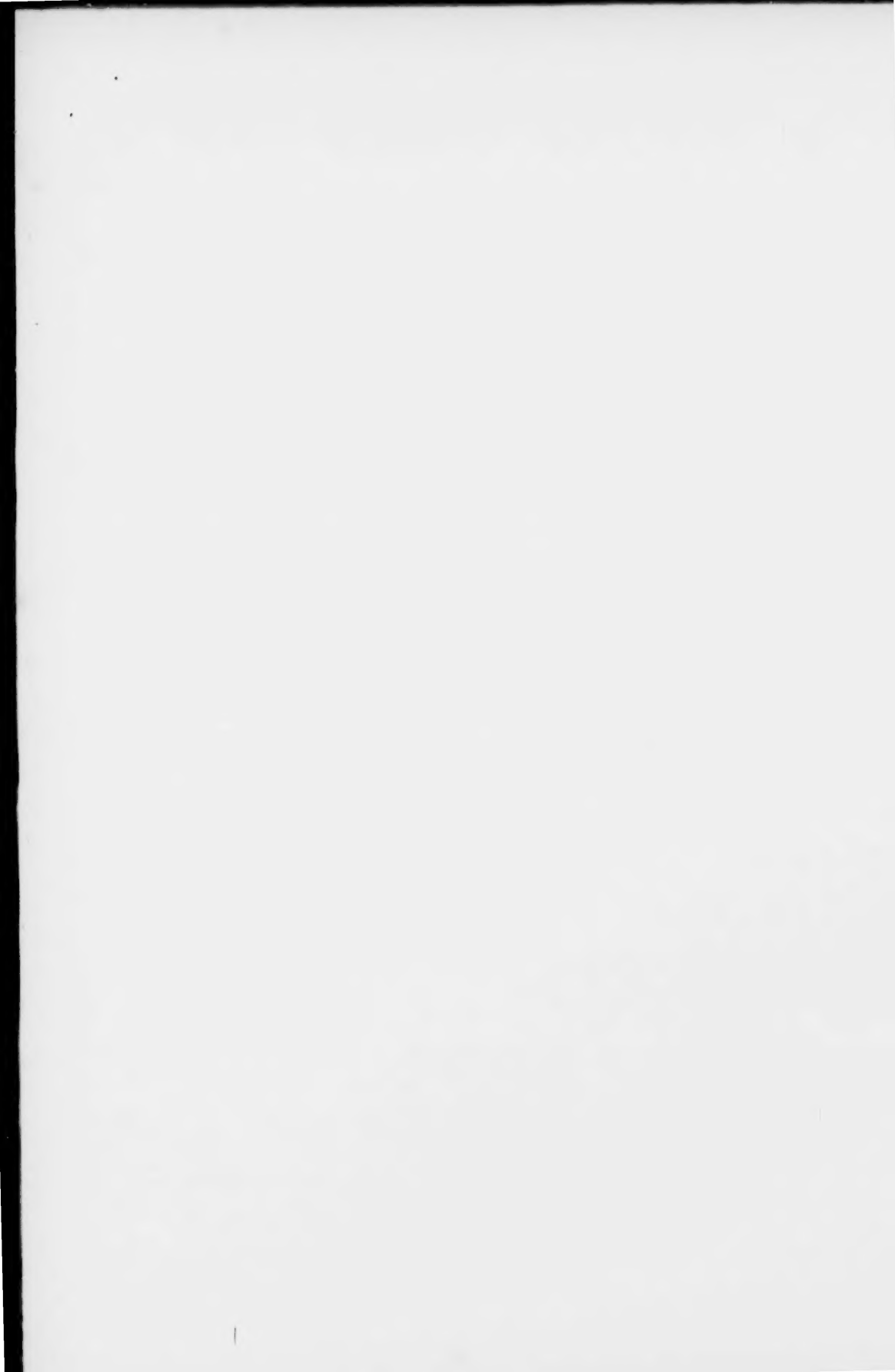
CONCLUSION

This Petition should be granted; otherwise a severe miscarriage of justice will be permitted to continue.

Respectfully submitted,

A handwritten signature in cursive script, reading "Darryl C. Gardner". The signature is written in dark ink and is positioned above a horizontal line.

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APPENDIX - ORDERS, etc. from
UNITED STATES TAX COURT, and
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

DARRYL C. GARDNER,)	
Petitioner,)	
)	
v.)	Docket No.
)	17904-88
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent)	

ORDER

On September 2, 1988, respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Motion for Damages Under Section 6673 were filed. On October 3, 1988, petitioner's Motion to Dismiss was filed.

A review of the petition in this case reveals that it does not comply with Tax Court Rule 34. Petitioner's claims have been uniformly rejected by the courts. Carter v. Commissioner, 784 F.2d 1006 (9th Cir. 1986); McCoy v. Commissioner, 696 F.2d 1234 (9th Cir. 1983), affg. 76 T.C. 1027 (1981); Rowlee v. Commissioner, 80 T.C. 1111 (1983); Baker v. Commissioner, T.C. Memo. 1978-60, affd.

without published opinion 639 F.2d 787 (9th Cir. 1980).

In his Motion to Dismiss, filed October 3, 1988, petitioner alleges that respondent has failed to state a claim. Petitioner's claim in this motion is without merit. Premises considered, it is hereby

ORDERED that petitioner's Motion to Dismiss, filed October 3, 1988, is hereby denied. It is further

ORDERED that petitioner shall on or before November 14, 1988, file a proper amended petition in which he sets forth clear and concise assignments of each and every error which petitioner alleges to have been committed and the facts upon which he bases the assignments of error. If petitioner fails to comply with Tax Court Rule 34(b)(4) and 34(b)(5) and fails to comply with this Order, the Court will be inclined to grant respondent's Motion to Dismiss for Failure to State a Claim and respondent's Motion for

Damages Under Section 6673.

This Order constitutes official notice to
the parties herein.

(Signed)

Peter J. Panuthos
Special Trial Judge

Dated: Washington, D.C.
October 11, 1988

=====

UNITED STATES TAX COURT
WASHINGTON, D.C.

DARRYL C. GARDNER,)	
Petitioner,)	
)	
v.)	Docket No.
)	3334-88
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent)	

MEMORANDUM SUR ORDER

On April 11, 1988, respondent filed a
Motion to Dismiss for Failure to State a Claim
for Relief and for Damages under Section 6673.
The motion was assigned to Special Trial Judge
Daniel J. Dinan for consideration pursuant to
section 7443A of the Internal Revenue Code of

1986, and Rules 180, 181, and 182.¹

In his notice of deficiency dated November 24, 1987, respondent determined the following deficiencies and additions to tax:

<u>Year</u>	<u>Deficiency</u>	<u>Additions to Tax</u> <u>Section</u> <u>6651(a)</u>	<u>Section</u> <u>6653(a)(1)</u>
1982	\$37,707.95	\$9,004.70	\$1,885.40
1983	13,771.00	3,442.75	688.55
1984	11,249.00	2,812.25	562.45

<u>Year</u>	<u>Section</u> <u>6653(a)(2)</u>	<u>Section</u> <u>6654</u>	<u>Section</u> <u>6661</u>
1982	*	\$3,465.64	\$9,426.99
1983	*	842.63	3,442.75
1984	*	707.29	2,812.65

* 50% of the interest due on the underpayments of \$36,018.79, \$13,771.00 and \$11,249.00, respectively.

Petitioner filed a petition with the Court on February 22, 1988. Petitioner filed an amended petition on March 22, 1988.

Rule 34(b)(4) sets forth those requirements which a taxpayer must meet in his

¹ All other section references are to the Internal Revenue Code of 1954, as amended and in effect for the years in issue. All Rule references are to the Tax Court Rules of Practice and Procedure.

petition to call into question respondent's determinations. Dismissal for failure to state a claim upon which relief can be granted is proper if the petition fails to meet the minimum requirements of Rule 34(b)(4).

Petitioner has failed to raise a justiciable issue in his petition or amended petition.

Petitioner argues that he is not subject to Federal taxes because he has withdrawn from the jurisdiction of the Federal government and, since he is no longer entitled to the "privileges and immunities" and protection afforded those persons who are within the jurisdiction of the United States, he is not liable for Federal income taxes. Petitioner's argument is patently frivolous. Section 1 imposes a tax on an individual's Federal taxable income. In general, all citizens of the United States, wherever resident, and all resident alien individuals are liable to the income taxes imposed by the Code whether the

income is received from sources within or without the United States. Section 1.1-1(b), Income Tax Regs. Petitioner has not submitted any facts which would tend to show that respondent erred in determining the amounts of Federal income taxes owed by him for the years 1982, 183 [sic], and 1984, and the underpayment thereof.

Respondent's motion to dismiss is granted because petitioner has stated no facts which would entitle him to relief.

Respondent, in his motion, filed April 11, 1988, also moved the court to award damages pursuant to section 6673. Section 6673 allows us to award respondent damages not in excess of \$5,000 whenever it appears to us "that the taxpayer's position is frivolous or groundless."

Clearly, petitioner's position is both frivolous and groundless in this case. His argument is completely without merit. He has raised no justiciable issue. Accordingly, we

award damages of \$5,000 to the United States.

(Signed)

Daniel J. Dinan
Special Trial Judge

Filed Apr 17, 1989

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UNITED STATES TAX COURT
WASHINGTON, D.C.

DARRYL C. GARDNER,)	
Petitioner,)	
)	
v.)	Docket No.
)	3334-88
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent)	

ORDER OF DISMISSAL AND DECISION

Respondent's Motion to Dismiss for Failure to State a Claim for Relief and for Damages under section 6673, filed April 11, 1988 were assigned to Special Trial Judge Daniel J. Dinan for consideration.

After a review of the record and for the reasons appearing in the Special Trial Judge's Memorandum Sur Order, hereto attached and served herewith, which we hereby approve and adopt, it is

ORDERED that respondent's above mentioned motions, filed April 11, 1988, are granted. It is further

ORDERED and DECIDED that there are deficiencies in and additions to Federal income tax due from petitioner for the years 1982, 1983 and 1984 as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Additions to Tax</u> <u>Section 6651(a)</u>	<u>Section 6653(a)(1)</u>
1982	\$37,707.95	\$9,004.70	\$1,885.40
1983	13,771.00	3,442.75	688.55
1984	11,249.00	2,812.25	562.45

<u>Year</u>	<u>Section 6653(a)(2)</u>	<u>Section 6654</u>	<u>Section 6661</u>
1982	*	\$3,465.64	\$9,426.99
1983	*	842.63	3,442.75
1984	*	707.29	2,812.65

* 50% of the interest due on the underpayments of \$36,018.79, \$13,771.00 and \$11,249.00, respectively.

It is further

ORDERED and DECIDED that damages in the amount of \$5000 are due from petitioner which are hereby awarded to the United States pursuant to section 6673.

(Signed)
Arthur L. Nims, III
Chief Judge

Entered Apr 17, 1989

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UNITED STATES TAX COURT
Washington, D.C. 20217

DARRYL C. GARDNER,)	
Petitioner,)	
)	
v.)	Docket No.
)	17904-88
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent)	

MEMORANDUM SUR ORDER

On September 2, 1988, respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Motion for Damages under Section 6673 were filed.¹ Respondent issued a notice of deficiency on April 11, 1988, to petitioner determining a deficiency in the amount of \$5,595. Respondent determined additions to tax as follows:

¹ This case was assigned pursuant to section 7443A and Rule 180. All section references are to the Internal Revenue Code and all Rule references are to the Tax Court Rules of Practice and Procedure.

<u>Sec. 6651(a)</u>	<u>Sec. 6653(a)(1)</u>	
\$1,398.75	\$279.75	
<u>Sec. 6653(a)(2)</u>	<u>Sec. 6654(a)</u>	<u>Sec. 6661(a)</u>
* 50% of interest due on deficiency	\$320.00	\$1,398.75

In the notice of deficiency, respondent determined that petitioner failed to file a Federal income tax return for the taxable year 1985. Respondent determined that petitioner received wages in the amount of \$26,220.

A petition was filed on July 13, 1988.² In his assignments of error, petitioner alleges in part as follows:

* * * the Commissioner of Internal Revenue erred [sic] by imposing liability upon the Petitioner for the year 1985, when said Commissioner in fact has no right, power, or authority to make such assessment or determination, and the errors are substantive in nature, because

² At the time of filing the petition herein, petitioner resided at Rogersville, Tennessee.

the Petitioner has no property, property rights and interests created by state law or contract to which consequences or liability can attach [sic] through the taxing power of the United States Congress.

After the filing of respondent's Motion to Dismiss for Failure to State a Claim, the Court issued an order on October 11, 1988, in which petitioner was advised that his petition did not comply with Tax Court Rule 34.

Certain cases were cited to petitioner, and petitioner was advised that claims similar to those made in the petition had been previously rejected. Petitioner was given a further opportunity to amend his petition in order to avoid a dismissal. Petitioner was advised that if he failed to comply with Tax Court Rule 34(b)(4) and (5) that respondent's Motion to Dismiss for Failure to State a Claim and respondent's Motion for Damages Under Section 6673 might be granted.

Rule 34(b)(4) provides that the petition shall contain "[c]lear and concise assignments of each and every error which the petitioner alleges to have been committed by the Commissioner in the determination of the deficiency or liability." Further, Rule 34(b)(5) provides that the petition shall contain "[c]lear and concise lettered statements of the facts on which petitioner bases the assignments of error." No justiciable error has been alleged in the petition with respect to respondent's determination of the deficiency, and no facts in support of such error are set forth therein. The absence in the petition of specific justiciable allegations of error and of supporting facts compels this Court to grant respondent's motion. See Klein v. Commissioner, 45 T.C. 308 (1965); Goldsmith v. Commissioner, 31 T.C. 56 (1958); Weinstein v. Commissioner, 29 T.C. 142 (1957).

There is no doubt that petitioner bears

the burden of proof to establish that respondent's determination is erroneous. Welch v. Helvering, 290 U.S. 111, 115 (1933). It is equally clear that any issues not raised in the assignments of error shall be deemed to be conceded. Jarvis v. Commissioner, 78 T.C. 646, 658 n. 19 (1982).

With respect to the additions to tax, petitioner bears the burden of proof. Bixby v. Commissioner, 58 T.C. 757, 791 (1972). Petitioners have not alleged any justiciable error with respect to these additions. Accordingly, respondent's determination with respect to the deficiencies and additions to tax is sustained.

These arguments and the documents filed by petitioner represent a regurgitation of thoroughly discredited and meritless arguments. Petitioner raises no justiciable issues in this case. Accordingly, we will not expend any additional judicial resources on this matter. McCoy v. Commissioner,

76 T.C. 1027, 1029-1030 (1981), affd. 696 F.2d 1234 (9th Cir. 1983); Rowlee v. Commissioner, 80 T.C. 1111 (1983).

The amended petition filed on November 14, 1988, contains more of the same protestor-type arguments. Petitioner was advised on more than one occasion that if he continued to raise frivolous and groundless claims that damages would be imposed under section 6673. Nevertheless, petitioner has insisted upon continuing on this course. We find petitioner's arguments are frivolous and groundless and that this action has been instituted and maintained primarily for delay.

Based on the foregoing, respondent's Motion to Dismiss for Failure to State a Claim will be granted. Furthermore, respondent's Motion for Damages is granted and damages will be awarded to the United States in the amount of \$3,500.

(Signed)

Peter J. Panuthos
Special Trial Judge

Filed Feb 21, 1989

UNITED STATES TAX COURT
Washington, D.C. 20217

DARRYL C. GARDNER,)	
Petitioner,)	
)	
v.)	Docket No.
)	17904-88
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent)	

ORDER OF DISMISSAL AND DECISION

On September 2, 1988, respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Motion for Damages Under Section 6673 were filed. For the reasons set forth in the attached Memorandum Sur Order, it is hereby

ORDERED: That respondent's Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted and Motion for Damages Under Section 6673, filed September 2, 1988, are granted. It is further

ORDERED AND DECIDED: That there is a deficiency in the amount of \$5,595 for 1985 due from petitioner. It is further

ORDERED AND DECIDED: That there are

additions to tax due from petitioner for 1985
as follows:

<u>Sec. 6651(a)</u>	<u>Sec. 6653(a)(1)</u>
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\$1,398.75	\$279.75
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<u>Sec. 6653(a)(2)</u>	<u>Sec. 6654(a)</u>	<u>Sec. 6661(a)</u>
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* 50% of interest due on deficiency	\$320.00	\$1,398.75
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It is further

ORDERED AND DECIDED: That damages are due
from petitioner which are hereby awarded to
the United States in the amount of \$3,500
pursuant to section 6673, Internal Revenue
Code of 1954, as amended.

(Signed)

Peter J. Panuthos
Special Trial Judge

Entered Feb 21, 1989

NOS. 89-1555/1855

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DARRYL C. GARDNER,)	
Petitioner-Appellant)	
)	
vs.)	ORDER
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent-Appellee)	

The court having determined that consolidation of the above-styled causes for the purpose of submission to the court is appropriate.

It is ORDERED that the causes be, and they hereby are, consolidated for the purpose stated above.

ENTERED PURSUANT TO RULE 8(b)
RULES OF THE SIXTH CIRCUIT
Leonard Green, Clerk

Signed

Filed Oct 18, 1989

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DARRYL C. GARDNER,)	
Petitioner-Appellant)	
)	
vs.)	ORDER
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent-Appellee)	

Upon consideration of the motion of the appellant to order the appellee to prepare the joint appendix or, alternately, to waive filing said document,

It is ORDERED that the motion be, and it hereby is, denied. Pursuant to Rule 11(j)(1), Rules of the Sixth Circuit, the appellant may submit three (3) copies of the certified record if said document does not exceed one hundred (100) pages in length. Absent this exception, a joint appendix must be filed.

ENTERED PURSUANT TO RULE 8(b)
RULES OF THE SIXTH CIRCUIT
Leonard Green, Clerk

Signed

Filed Jan 10, 1990

(NOT RECOMMENDED FOR FULL TEXT PUBLICATION)

Nos. 89-1555, 89-1855

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DARRYL C. GARDNER,)	
Petitioner-Appellant)	
)	
vs.)	ORDER
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent-Appellee)	

BEFORE: KRUPANSKY and NELSON, Circuit Judges;
and BELL, District Judge.*

These cases have been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit. Upon examination of the records and the briefs, this panel unanimously agrees that oral argument is not needed. Fed. R. App. P. 34(a).

Petitioner Gardner filed two separate actions in the Tax Court to redetermine tax deficiency assessments. The Tax Court

* The Honorable Robert Holmes Bell, U.S. District Judge for the Western District of Michigan, sitting by designation.

dismissed both petitions and imposed additional sanctions under 26 U.S.C. Sec. 6673 (instituting Tax Court action primarily for delay). These appeals followed and were consolidated for disposition. The parties have briefed the issues, petitioner proceeding without counsel.

Upon consideration, we find the appeals to be without merit. Petitioner Gardner has made no attempt to dispute the accuracy of the Commissioner's computations, the legal reasoning of the Tax Court or the propriety of Sec. 6673 sanctions. He instead maintains that he has "deeded away" his "property interest" under the United States Constitution and he is therefore no longer subject to the taxing authority of the Internal Revenue Service. The Commissioner properly points out the overwhelming body of authority holding that an individual may not opt out of an obligation to pay taxes, whether by fiat or by the legal hocus-pocus used in the cases at bar.

The Commissioner's suggestion that these appeals are frivolous is sound. Petitioner Gardner could not possibly have expected his convoluted legal arguments to prevail in this court any more than they did in the Tax Court. We have previously determined that a flat figure of \$1,200 is appropriate as a sanction under Fed. R. App. P. 38, in analogous cases. Schoffner v. Commissioner, 812 F.2d 292, 293-94 (6th Cir. 1987) (per curiam).

The Commissioner suggests, however, that the nature of these consolidated appeals warrants an award of \$1,500. We have examined the Commissioner's arguments and supporting authority and find them to be persuasive. We therefore adopt the Commissioner's suggestion that appellant Gardner should be charged \$1,500.

Accordingly, the Tax Court's judgments are affirmed. Rule 9(b)(5), Rules of the Sixth Circuit. The Commissioner is awarded double costs of these appeals and \$1,500. Fed. R.

App. P. 38.

ENTERED BY ORDER OF THE COURT
Leonard Green, Clerk

Signed

Entered Feb 7, 1990

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NOS. 89-1555/1855

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

DARRYL C. GARDNER,)	
Petitioner-Appellant)	
)	
vs.)	ORDER
)	
COMMISSIONER OF INTERNAL)	
REVENUE,)	
Respondent-Appellee)	

Upon consideration of the motion of the
appellant to recall the mandate and extend the
time for filing a petition for rehearing to
March 12, 1990,

It is ORDERED that the motion be, and
hereby is, denied.

ENTERED BY ORDER OF THE COURT
Leonard Green, Clerk

Signed

Entered Mar 9, 1990

CONSTITUTIONAL AND OTHER AUTHORITIES:

U.S. Const., Art. I, Sec. 10, Cl. 1, in pertinent part:

No state shall ... pass any ... Law impairing the Obligation of Contracts.

U.S. Const. "Supremacy Clause", Art. VI, Cl. 2:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

U.S. Const. Art. VI, Cl. 3:

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

U.S. Const., Fifth (5th) Amendment, in pertinent part:

No person ... shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law ...; nor shall private property be taken for public use, without just compensation.

U.S. Const., Ninth (9th) Amendment:

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

U.S. Const., Tenth (10th) Amendment:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Tenn. Const., Art. I, Sec. 1:

That all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; for the advancement of these ends they have at all times, an unalienable and indefeasible right to alter, reform, or abolish the government in such manner as they may think proper.

Tenn. Const., Art. I, Sec. 3, in pertinent part:

... that no human authority can, in any case whatever, control or interfere with the rights of conscience ...

Tenn. Const., Art. I, Sec. 8, in pertinent part:

That no man shall be ... in any manner ... deprived of his ... property, but by the judgment of his peers, or the law of the land ...

Tenn. Const., Art. I, Sec. 21:

That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor.

26 U.S.C. 7701(a)(1) - **Person**

The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

26 U.S.C. 7701(a)(13) - **Commissioner.**

The term "Commissioner" means the Commissioner of Internal Revenue.

26 U.S.C. 7701(a)(14) - **Taxpayer.**

The term "taxpayer" means any person subject to any internal revenue tax.

26 U.S.C. 7802(a) - **Commissioner of Internal Revenue.**

There shall be in the Department of the Treasury a Commissioner of Internal Revenue, who shall be appointed by the President, by and with the advice of the Senate. The Commissioner of Internal Revenue shall have such duties and powers as may be prescribed by the Secretary of the Treasury.

Black's Law Dict., 5th Edn., p. 1307, in pertinent part:

Tax. A pecuniary burden laid upon individuals or property to support the government, and is a payment exacted by legislative authority; a ratable portion of the produce of the property and labor of the individual citizens, taken by the nation, in the exercise of its sovereign rights, for the support of government, for the administration of its laws, and as the means for continuing in operation the various legitimate functions of the state; in a general sense, any contribution imposed by government upon individuals, for the use and service of the state, whether under the name of toll, tribute, tallage, gabel, impost, duty, custom, excise, subsidy, aid, supply, or other name; not a voluntary payment, but an enforced contribution.

T.C.A., Sec. 5-1-101, in pertinent part:
Enumeration of Counties. - The state is divided into the following counties: ... Hawkins ...

Dec. of Indep., second paragraph, in pertinent part:

... that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed ...

